

OFFICIAL GAZETTE

GOVERNMENT OF GOA



Note: 1. There is one Extraordinary issue to the Official Gazette Series II No. 43 dated 21-1-99 namely Extraordinary dated 21-1-99 from pages 651-654 regarding Notifications/Corrigendum from Department of Revenue.

2. In the Note appearing in Series II No. 43 dated 21-1-99, the date of Extraordinary be corrected as 14-1-99 instead of 18-1-99.

GOVERNMENT OF GOA

Department of Co-operation

Office of the Registrar of Coop. Societies

Order

No. 48-1-90/TS/RCS

Read:- Letter dated 12-3-98 from Adv. Anand M. Redkar, Margao Goa.

In exercise of the powers conferred on me by Sub-section (1) of section 93 of the Maharashtra Cooperative Societies Act, 1960 as in force in the State of Goa read with Sub-Rule (1) of Rule 73 of the Cooperative Societies Rules, 1962, I, S. D. Desai, Registrar of Coop. Societies, Goa am pleased to appoint Adv. Anand M. Redkar, Margao Goa as Registrar's Nominee for deciding the disputes arising in any of the Coop. Societies, referred to him by the Registrar of Coop. Societies or Asstt. Registrar of Coop. Societies, Central Zone, Panaji, South Zone, Margao, North Zone Mapusa and Dairy Office Ponda of State of Goa, for the period upto 31-3-1999.

S. D. Desai, Registrar of Coop. Societies.

Panaji, 20th October, 1998.

Order

No. 23-1-96-Credit-NZ-Anandi/RCS

Read:- Order No. 23-1-96-TS-Credit-NZ dated 20-10-97.

By virtue of the powers vested in me under Sub-Clause (ii) of clause (a) of Sub-section (1) of section 78 of the Maharashtra Coop. Societies Act, 1960 as in force in the State of Goa, read with Clause (b) of Sub-Rule (1) of Rule 61 of the Coop. Societies Rules, 1962, I, S. D. Desai, Registrar of Coop. Societies, Goa hereby extend the period of Administrator of Anandi Mahila Urban Coop. Credit Society Ltd., Sanquelim Goa for further period of six months with effect from 21-10-1998. The Administrator shall take necessary steps to hold the election of the Managing Committee of Anandi Mahila Urban Coop. Credit Society Ltd., Sanquelim before the completion of the extended period.

S. D. Desai, Registrar of Coop. Societies.

Panaji, 20th October, 1998.

Order

No. 21-15-93-TS-RCS

Read:- This office order No. 21-15-93/TS/1692 dated 6-10-97.

In partial modification of this office order No. 21-15-93/TS/1692 dated 6-10-97 as cited at Sr. No. 1 above and in exercise of the powers vested in me under section 78 of the Maharashtra Coop. Societies Act, 1960 as in force in the State of Goa, read with Rule 61 of the Coop. Societies Rules 1962, I, S. D. Desai, Registrar of Coop. Societies, Goa hereby appoint the following persons on the Committee of Administrators of the Bhandari Coop. Credit Society Ltd., Panaji in place of Committee of Administrators appointed vide order No. 21-15-93/TS/1692 dated 6-10-97 referred to Sr. No. 1 above with immediate effect.

1) Shri Suresh Parulekar,
Verem, Bardez-Goa.

Chairman.

2) Shri Gurudas S. Sawal,
Journalist Patrakar
Colony-Porvorim - Goa.

Member.

The term of Committee of Administrators stands extended for a further period of one year. The Committee of Administrators shall take necessary steps to hold election of the society at the earliest.

S. D. Desai, Registrar of Coop. Societies.

Panaji, 21st October, 1998.

Order

No. 1-3-71/EST/RCS/(Part)

Read:- 1. Govt. Order No. 96/1/93-MR/MKT/RCS dated 3-4-1998 promoting Shri S. S. Volvoikar, Coop. Officer/ Special Auditor to the post of Asstt. Registrar, Coop. Societies, Group 'B' Gazetted on ad hoc basis.

2. Letter No. COM/II/11/11(1)/96 dated 23-10-98 from Goa Public Service Commission, Panaji - Goa.

Government is pleased to continue the ad hoc appointment of Shri S. S. Volvoikar, Coop. Officer/Special Auditor to the post of Asstt. Registrar of Coop. Societies, Group 'B' Gazetted on the Establishment of the Office of the Registrar of Coop. Societies Goa for a further period of six months or till the post is filled on regular basis on the same terms and conditions w.e.f. 3-10-1998, whichever is earlier.

By order and in the name of the Governor of Goa.

S. D. Desai, Registrar of Coop. Societies & Ex-Officio Joint Secretary.

Panaji, 27th October, 1998.

Order

No. 1-4-76/EST/RCS

Read: 1. Letter No. COM/II/11/11(1)/91 dated 30-6-98 from the Secretary, Goa Public Service Commission, Panaji-Goa.

2. Government Order No: 1-1-76/EST/RCS/396 dated 6-10-98 promoting 4 incumbents holding the posts of Sr. Auditor/Sr. Inspector/Special Recovery Officer to the post of Spl. Auditor/Coop. Officer.

3. Letter dated 12-10-98 from Shri M. B. Bhavsar conveying his non acceptance of promotion to the post of Coop. Officer.

In partial modification to Government Order read (2) and on the recommendation of Goa Public Service Commission vide letter dated 30-6-98, Shri D. B. Naik holding the post of Sr. Auditor/Sr. Inspector/Special Recovery Officer in the office of Registrar of Coop. Societies is hereby promoted as Special Auditor/Coop. Officer in the pay scale of Rs. 5500-175-9000 (Group 'B' Non-Gazetted) on officiating basis and posted in the Office of the Asstt. Registrar of Coop. Societies, Dairy, Ponda against the vacancy caused due to the non acceptance of promotion by Shri. M. B. Bhavsar.

Shri Naik may exercise his option for fixing his pay within one month from the date of receipt of this order.

This order shall come into force from the date of taking over the charge of his new posting.

The concerned Asstt. Registrar of Coop. Societies should relieve him immediately.

By order and in the name of the Governor of Goa.

S. D. Desai, Registrar of Coop. Societies and Ex-Officio Jt. Secretary.

Panaji, 30th October, 1998.

Order

No. 15-8-94-Adm. I/B (Vol. II)/2602

On the recommendations of the Departmental Promotion Committee conveyed by the Goa Public Service Commission's Letter No. COM/II/11/15(1)/95 (Vol. II) dated 10-10-1998, the Government of Goa is pleased to promote the following officers in the grade of Teacher Grade-I/Senior Instructor/Assistant District Educational Inspector/ Headmaster of Govt. Middle School/Assistant Social Education Officer, to the post of Headmaster of Govt. High School/Vice-Principal of Govt. Higher Secondary School, in the scale of Rs. 6500-200-10,500, with immediate effect and post them in the schools as shown under Col. No. 4 below.

Sr. No.	Name of the Officer	Designation & place where presently working	Designation and place where now posted on promotion	
			1	2
1.	Shri Vinayak M. Parmekar	Teacher Grade-I Govt. Higher Secondary School, Pernem	Headmaster, Govt. High School, Nadora-Bardez.	
2.	Shri Koti Saipannuluk Fatoroddin	Teacher Grade-I Dr. T. B. Cunha Govt. Higher Secondary School, Panaji - Goa.	Headmaster, Govt. High School, Morpirla-Quepem.	

They may exercise their option if desired, for fixation of pay under provisions of F. R. 22(i) (a), (i) within one month of the date of promotion and option once exercised shall be final.

The promotion takes effect from the date of taking over the charge of the post. The promotees shall take the charge of the new assignment on or before 22-1-1999. They shall be on promotion for a period of two years.

By order and in the name of the Governor of Goa.

Suman Pednekar, Director of Education and Ex-Officio Joint Secretary.

Panaji, 13th January, 1999.

Order

No. 15-8-94-Adm. I/B (Vol. II)/2603

Government is pleased to transfer the below mentioned Headmasters of Govt. High Schools and post them to the places shown against their names in Col. 3, with immediate effect.

Sr. No.	Name of the Officer, Designation & place where presently working	Place where posted on transfer	
		1	2
1.	Shri C. S. Chiplunkar, Headmaster, Govt. High School, Savorde-Satari	Govt. High School, Morlem-Satari.	
2.	Shri Ramrao H. Patil, Headmaster, Govt. High School Morpirla - Quepem	Govt. High School, Savorde Sarari.	

They are not entitled to transfer TA as the transfers are effected on their own request.

By order and in the name the Governor of Goa.

Suman Pednekar, Director of Education and Ex-Officio Joint Secretary.

Panaji, 13th January, 1999.

Department of Industries

Corrigendum

No. 15-16/80-ILD Vol. (I) (Part)

Read: Order No. 15-16/80-ILD (Vol. I) (Part) dated 8-1-99.

The name of Shri Damodar Pankar at Sr. No. 5 of the above mentioned order may please be read as Shri Sadanand Verecar.

By order and in the name of the Governor of Goa.

S. K. Jain, Joint Secretary (Industries).

Panaji, 11th January, 1999.

Department of Labour

Order

No. 28/52/91-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

V. G. Manerkar, Under Secretary (Labour).

Panaji, 12th March, 1992.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri M. A. Dhavale, Hon'ble Presiding Officer)

Ref. No. IT/15/86

Shri Datta L. Naik V/s	— Workman/Party I
M/s Pandurang Timblo Industries	— Employer/Party II

Workman represented by Shri K. V. Nadkarni.

Employer represented by Shri S. V. Cuncolienkar.

Panaji, Dated: 28-2-1992.

AWARD

In exercise of the powers conferred by clause (d) of Sub.S.(1) of S. 10 of the Industrial Disputes Act, 1947, the Lieutenant Governor of Goa, Daman and Diu, by his letter No. 28/18/80-ILD dated 5th June, 1986 has referred the following issue for adjudication by this Tribunal:

“Whether the action of the employer, M/s Panduranga Timblo Industries, Margao, Salcete-Goa, in terminating the services of Shri Datta L. Naik, Clerk w.e.f. closing hours of 4-12-1985 is legal and justified.

If not, to what relief the workman is entitled to?”

2. On receipt of this reference, a case at No. IT/15/86 was registered and notices were issued to both the parties, in response to which they appeared and submitted their pleadings.

3. Party I-Shri Datta L. Naik (hereinafter called as the “Workman”) has filed his statement of claim (Exb.2), wherein he has averred as follows:

Workman- Shri Naik was employed as a Clerk at the Head Office of Party II M/s Timblo Irmaos Limited, Margao, Goa (hereinafter called as the “Employer-Firm”). He was issued a letter of appointment dated 30th August, 1962 and the appointment was effective from 11-11-1961. M/s Timblo Irmaos Ltd., was subsequently reconstituted and a new Firm known as M/s Pandurang Timblo Industries was formed and the workman were absorbed in the newly constituted Firm without there being any change in the service conditions and terms of employment and without effecting the continuity of services of the workmen. In the year 1974, an

union was formed by the staff members at the Head Office of the Firm, which was styled as Goa General Offices & Establishment Staff Association, Margao, Goa, of which the present workman was a member. In the General Body meeting of the Union which was held on 3-1-76 the present workman was elected as a Treasurer and this fact was conveyed by the Union to the Employer. However, it has been averred that since the workman's appointment as a Treasurer of the Union, the management of the Firm started harassing the workman in various ways and at times pressure was also brought on the workman to sever his relations with the union. However, the workman refused. Hence, he was transferred from the Head Office to Curchorem Office. This transfer was challenged by the workman by approaching the Industrial Tribunal. When the order of transfer was pending adjudication, the management served another order of transfer from Curchorem Office to Kakoda Garage. This second order of transfer was also challenged by the workman. It has been stated that on his transfer on both the occasions, the workman was given some casual and un-important work for a few days and later on he was made to sit idle and was thus humiliated in several ways. In the industrial dispute before this Tribunal, an award was passed holding that the first transfer of the workman made by the management was illegal. However, unfortunately the said award was quashed in an appeal to the High Court preferred by the management. It has been averred that since the date of the publication of the award the management started harassing the workman in various ways particularly by issuing letters wherein false allegations against the workman were made. However, the workman replied all the letters, memos etc., served upon him by the management from time to time and refuted all the allegations levelled against him by the management. However, thereafter on 28-7-82 a charge sheet was served on the workman by the management making some false and baseless allegations. The workman refuted all the allegations and the charges levelled against him. Hence a Domestic Enquiry was instituted against this workman and Shri R. V. Gaitonde, a practicing Labour Law Consultant was appointed as the Inquiry Officer. However, the said I. O., after holding some proceedings abandoned the enquiry for the reasons best known to the Inquiry Officer or the management, at whose instance, the enquiry was initiated. After the High Court delivered the judgement in Civil Application No. 42-B of 1981 on 14th June, 1984 in respect of the first transfer of the workman, the management stopped even the monthly salary and wages due to the workman alone and also failed to pay Bonus for the financial year 1982-83. This non-payment of salaries and Bonus continued till December, 1984. After the intervention of the Asst. Labour Commissioner, South Goa and in a conciliation proceedings, the workman was paid his unpaid salaries and Bonus on 22-12-84. Despite the above referred harassment, the management continued to harass the workman by illegally marking him absent for a couple of days in a month and by deducting his wages despite the protest made by the workman from time to time. However, the workman refrained to contest the illegal action of the management solely due to his desire to avoid litigation with the powerful management. Finally, on 4-12-85, the management served a letter on this workman and terminated his services from the close of working hours on 4-12-85. The reasons stated in the order of termination was that his service record was not satisfactory. According to the workman, the reason of unsatisfactory service record stated in the order of termination attaches stigma on this workman, which ought to have been proved by holding an enquiry and by affording a reasonable opportunity to this workman. However, the management failed in all those respects, before issuing an order of termination. Thus, According to the workman, the order terminating his services amounts to retrenchment. However, at the time of retrenchment, the workman was not paid his legal dues i.e retrenchment compensation etc., provided under S.25F of the Industrial Disputes Act, 1947, and on this ground alone it has been claimed that the order of retrenchment is patently illegal and liable to be quashed. Hence on all these grounds, the workman prays that he should be reinstated in service with full back wages and continuity of service and other incidental reliefs.

— 4. Party II-M/s Pandurang Timblo Industries, by its Written Statement at Exb.3 resisted the workman's claim contending inter alia as follows :

It is true that there is an Union known as Goa-General Officers & Establishments Staff Association, Margao, Goa, of which some of the employees of Party II, are the members. However, it is denied that after joining the union, the management started harassing the workman and by exerting pressure on him to resign his post in the Union. It is denied that

after the workman was transferred he was given casual and un-important work and at times he was made to sit idle or was humiliated as alleged by the workman in his statement of claim. It is true that in a case No. IT/12/177 the management's action in transferring the workman to Curchorem Office was held illegal and unjustified. However, according to the employer, since the passing of the award the workman started committing misconduct by coming late, showing insubordination and refusing to carry out the orders of the superiors for which he was warned from time to time by several letters referred to in para. 6 of the written Statement. It is denied that the monthly salary of the workman was stopped and that he was not paid Bonus as alleged in the Statement of Claims. It is denied that the reasons stated in the order of termination attaches a stigma on the workman as averred by him in the statement of claim. The management has denied the workman's allegation that an enquiry ought to have been held before termination and that he ought to have been given retrenchment compensation under the law. In para. 12 of the W. Statement, it has been contended by the employer-firm, that no misconduct has been alleged against the workman nor was any misconduct made a foundation for passing the order dated 4th December, 1985 terminating the workman's services. Thus, according to the Employer-Firm, the said order was not passed by way of punishing the workman for any misconduct. However, it has been submitted that the Employer-Firm had come to a bonafide conclusion that the service record of the workman was not satisfactory. The said conclusion was based on the past incidents set out in para. 6 of the W. S. Thus, according to the employer, the workman's services were terminated in terms of stipulation in this behalf viz. clause (2) in the contract of employment dated 30th August, 1962 between the employer-firm and the workman. Thus, it has been prayed that since the order of termination is perfectly legal and valid, the workman is not entitled to claim any relief from this Tribunal.

5. Party I-Workman by his rejoinder at Exb. 4 controverted each and every contention taken up by the employer-firm in his Written Statement at Exb. 4 and reiterated his claim made in the statement of claims.

6. On these pleadings, my learned Predecessor, Shri S. V. Nevagi, framed the following issues at Exb. 5.

ISSUES

1. Whether Party No. II/Employer proves that the order of termination dated 4th December, 1985 was based on the consideration of the workman's past record proceeding termination, as alleged?
2. If so, whether the management was justified in terminating the services of the Workman/Party No. I, by bonafide considering the past record, as alleged?
3. Whether the termination amounts to victimization and is punitive in nature, as alleged?
4. If so, what relief, if any is the workman entitled to?

7. My findings on the above issues are as follows for the reasons stated below:

1. In the affirmative
2. In the negative
3. In the affirmative
4. As stated in para. 25.

REASONS

8. The rival contentions of the parties to this dispute has been stated in the opening paragraphs of this judgement, which need no further repetition. Now, before proceeding to consider the submissions made by the learned Advocates for both the sides, I think it necessary, to state in brief, some of the facts which are either admitted or which can be otherwise be taken as duly proved from the evidence on record. Now the evidence

in this case consists of oral testimonies as also several documents which has been produced by both sides. On behalf of Party I, Workman-Shri Datta L. Naik has examined himself at Exb. 6 while on behalf of the Employer-Firm its Accountant by name Shri Narayan Moghe has been examined at Exb. 47 and besides him the Employer has also examined Shri R. V. Gaitonde, who was the Inquiry Officer in the enquiry held against the workman. Now, it is a common ground that this workman was first appointed by Party II as a clerk at the Head Office. He started serving from 11-11-61. However, the letter of appointment was issued to him on 30th August, 1962. Of course, it has given an effect from 11-11-61. Previously, Party II was styled as M/s Timblo Irmaos Ltd., which was subsequently re-constituted as one of the constituent of the original company separated and formed a new Firm which was styled as M/s Pandurang Timblo Industries. However, this workman was absorbed in the newly constituted Firm without there being any change in service conditions and terms of employment as also without affecting the continuity of his service as a workman, with the previous employer. It is also a common ground that in the year 1974, the staff members at the Head Office of Party II formed an Union named as Goa General Offices and Establishment Staff Association, Margao, Goa. The workman was a member of this Union. However, subsequently, he became the Treasurer of the Executive Committee. The formation of the union was duly communicated to the Employer-Firm. Now, it is the contention of the workman that since the formation of Union the management started harassing the workman in various ways and by pressing him to resign from the post in the Union. However, the workman refused. Hence, the workman was transferred from Head Office to Curchorem Office. However, this transfer, in the estimate of the workman, was illegal and void and hence he raised an industrial dispute which terminated in his favour and the transfer was held illegal. However, aggrieved by this award of the Tribunal, the Employer-Firm approached the Hon. High Court by filing the Writ Petition in which the Tribunal's award was set aside and the action of the management was upheld. However, even before the workman's case was pending adjudication the management again transferred him from Curchorem Office to Kakoda Garage. After the decision of the Tribunal in the transfer case, it is the say of the workman that the management started harassing him in several ways. It is also a common ground that on 28-7-82 a charge sheet was served by the management making some allegations. The workman refuted the allegations and the charges levelled against him and hence a Domestic enquiry was held which was being conducted by Shri R. V. Gaitonde. The employer has examined Shri Gaitonde who in his evidence has admitted that he could not complete the enquiry and hence the same was dropped. Thereafter, no fresh enquiry was initiated against the workman with the result that the allegations made against him on the basis on which he was charge sheeted, were not proved by holding any proper departmental enquiry. Despite this state of affairs, the management-Firm finally passed an order of termination dated 4th December, 1985 under which the workman's services were terminated from the close of working hours on 4-12-85. The reasons stated for the termination was in substance to the effect that the workman's service record was not satisfactory. Thereafter, the workman raised a dispute before the Labour Commissioner where there was no settlement and finally the Government was pleased to make a reference to this Tribunal for adjudication of the dispute between the parties. There are some of the established facts on the basis of which, I now advert myself to the several submissions made on behalf of both the sides.

9. Now, it cannot be disputed that the order of termination amounts to retrenchment of the workman, who was serving since 1961 with the employer. Shri K. V. Nadkarni has relied upon several rulings to emphasize his submission on this point. However, the position of law on this point is well settled and hence I hold that the order of termination issued against the workman amounts to retrenchment.

10. Now, it has been urged by Shri K. V. Nadkarni for the workman that the Employer-Firm did not comply with the mandatory provisions of Sec. 25F of the Industrial Disputes Act and according to him, this ground by itself is more than enough to hold that the impugned order of termination

is void and illegal. The said Section in substance lays down that the Employer shall not retrench any employee until (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment or in the absence of any notice the notice pay is given and (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to 15 days average pay on every completed year of continuous service or in part thereof in excess of 6 months.

11. It has been urged in the present case by Shri Nadkarni that the employer-firm did not pay retrenchment compensation to the workman at the time of retrenchment. There is substantial force in the submission made by Shri Nadkarni which I would presently point out.

12. The letter of termination can be found at Exb. 45(W) dated 4th December, 1985. It is addressed to the workman by his name and the first para. states that the workman's services stands terminated from the close of work on December 4th, 1985 as his record of service is un-satisfactory. Thereafter it has been stated thus which requires to be reproduced ad verbitum:

"You will be entitled to one month's wages in lieu of notice and as per particulars given below:-

1. Notice Pay in lieu of one month's notice	— Rs. 740.00
2. The salary for Nov.'85 and 4 days of Dec., 1985	— Rs. 835.48
3. Encashment of leave for 26 days to your credit.	— Rs. 641.42
4. Gratuity amount for 24 years of service	— Rs. 10,246.15
5. Bonus for the years 1983-84 and 1984-85	— Rs. 615.95
 Total	— Rs. 13,734.60
Less P. F.	— Rs. 666.60
 Net Amount Payable	— Rs. 13,667.60

A Banker's cheque for Rs. 13,667.60 (Rupees thirteen thousand six hundred sixty seven and paise sixty only) is enclosed herewith to cover the above payment in full and final settlement of all your claims against the Management."

13. I have purposely reproduced the contents of Exb. 45 which is the letter of termination dated 4th December, 1985, with a view to emphasize that the workman was not paid the retrenchment compensation and it has been specifically stated that an amount of Rs. 13,667.60, in respect of which a cheque was issued was in **full and final settlement of all the workman's claims** against the management. Thus, reading Exb.45, it is abundantly clear that the employer on his side was under an impression that by paying (1) Notice pay in lieu of one month's notice, (2) Salary for Nov., '85 and 4 days of December, 1985, (3) Encashment of leave for 26 days and (4) Gratuity for 24 years and (5) Bonus for the years 1983-84 and 1984-85, the workman's legal dues were paid off and this is evident by the wording used in this letter that the aforesaid payment was in **full and final settlement of all the claims of the workman**. Thus it is evident that at the time of retrenchment, the workman was not paid retrenchment compensation which ought to have been paid, in view of the provisions contained in Section 25-F Sub. Clause (b) of the Industrial

Disputes Act. Now, Shri K. V. Nadkarni, the learned representative for the workman has invited my attention to some of the rulings of the Supreme Court and also of the other High Courts to emphasize his argument that non-payment of retrenchment compensation would invalidate the order of termination. Now, the position of law on this point is well settled by series of decisions. Shri Nadkarni has relied upon a ruling in the case of Punjab Land Development and Reclamation Corporation Ltd., Chandigarh V. The Presiding Officer, Labour Court, Chandigarh and Others (1990 EMP L.R. Vol. 6, 457). In the said case, a reliance has been placed to as many as six rulings of the Supreme Court in the cases of: 1. State Bank of India, V/s Sundra Money, 1976, (3S.C.R.), page 160; 2) Delhi Cloth and Mills Ltd., V/s Shambhu Nath Mukerji & others, 1978 (1 S.C.R.) page 591; 3) Santosh Gupta, V/s State Bank of Patiala, 1980 (3S.C.R.) page 884; 4) Mohanlal, V/s Management of M/s Bharat Electronics Limited, 1981 (3S.C.R.) page 518; 5) Surendra Kumar Varma, V/s Central Government Industrial Tribunal cum Labour Court, New Delhi, 1981 (1S.C.R.) page 789; and 6) Gammon India Ltd., V/s Niranjan Dass, 1984 (1 S.C.R.) page 509.

14. In all these decisions, the Supreme Court had earlier held that every termination of services is retrenchment and if Section 25F, regarding payment of retrenchment compensation, is not complied with, the termination is illegal and void. It is also equally clear from reading the recitals in Exb. 45 that payment of Rs. 13,667.60 was made in full and final settlement of the workman's claim without there being even an offer for the payment of retrenchment compensation. The employer's witness Shri Moghe in his cross examination has also clearly admitted, "It is true that the letter of termination does not include the offer for payment of retrenchment compensation etc." Thus, at the cost of repetition, I would say that the employer did not seem to have been aware of the provisions contained in sub. clause (b) of Section 25F of the I.D. Act. It has been also held by our High Court in the case of Devidayal Nanakchand Sharma v/s State Industrial Court, Nagpur, reported in 1961, I LLJ page 167, that even if the termination is effected under the Standing Orders, providing termination of services of a workman, the provisions of Sec. 25F will have to be complied with. Thus, in the instant case, even assuming that the employer had taken recourse to the Standing Orders for terminating the workman's services, still for want of compliance to the provisions contained in sub. clause (b) of Sec. 25F, the order of termination will have to be struck down.

15. That takes me to consider the other submissions made by the learned representatives for both the sides. Now, the record and proceedings of this case reveals that a charge sheet was issued to this workman which can be found at Exb. 27. The workman was charged for his habitual late attendance, and commission of an act subversive of discipline and good behaviour. For the proof of this charge, a departmental enquiry was initiated which was conducted by Shri Gaitonde. The employer has led his evidence at Exb.62. Now, Mr. R. V. Gaitonde is a Labour-Consultant and at the time of his enquiry, he seem to have been attached to the present employer and hence it seems that the enquiry was entrusted to him. Accordingly, for some days he conducted the enquiry and the R & P has been produced in this case at Exb.51. His evidence discloses that the enquiry was held only on three days, the last being 11-3-83. He has further stated, "I had to abandoned the enquiry because the workman did not cooperate and I say that the workman was not cooperative because he insisted upon asking irrelevant questions and since I had no other alternative, but to abandoned the enquiry." Thus, the I. O. abandoned the enquiry because in his estimate the workman was not cooperative. However, beside the oral assertions of Shri R. V. Gaitonde, there is absolutely no evidence to corroborate him on this point. On the other hand, in his cross examination, Shri Gaitonde has admitted thus: "There is nothing in the papers that the workman was not co-operative." Shri Gaitonde has further stated that on 11-3-83 the enquiry was held between 11.00 a. m. to 1.00 p. m. and in the concluding page he had

written that the enquiry was adjourned for the next date to be fixed. However, he has admitted, "There is no mention therein that the workman did not co-operate." Thus, it seems that on 11-3-83, Shri Gaitonde seems to have arrived at a conclusion that he was not in a position to proceed with the enquiry. However, the proceedings of 11-3-83 reveal that the enquiry was adjourned and the next date was to be fixed. However, this next date was not communicated to the workman as can be seen from Shri Gaitonde's evidence. He has admitted, "After 11-3-83, I of my own, did not inform the management about the next date fixed. So also, I do not know if the management had informed the workman about the next date fixed." This is in short, the fate of the departmental enquiry held against the workman.

16. Now, without any further repetition, I would say that there is no supporting evidence to accept Shri Gaitonde's statement that he abandoned the enquiry on account of the non-cooperative attitude of the workman. Even assuming for the sake of argument that the said allegation made by Shri R. V. Gaitonde is to be accepted, still it was not impossible for the employer to entrust the enquiry to some other officer and to conclude it. Merely because one I.O., abandoned the enquiry, that circumstance by itself, in my view, does not relieve the employer of his liability to get the charge proved by holding a regular enquiry before passing an order of retrenchment. Thus, this is a case where the enquiry was not concluded, with the result that there were no findings of the I.O., in regard to the proof or failure of charges levelled against the workman. It has been held by the Supreme Court in the case of Khardah & Co., v/s Workmen (AIR 1964 S.C. 719) and in the case of Sampuggur Jute Factory v/s Workmen (1964 I LLJ 634 (S.C.) that a failure to record any finding after holding an enquiry would constitute a serious infirmity in the enquiry itself and in such a case the domestic enquiry itself will have to be ignored. Now, it has been urged by Shri Nadkarni that in as much as the enquiry was abandoned by Shri Gaitonde and since no second enquiry was initiated against the workman, that circumstance clearly leads to the only inference that the charges levelled against the workman were not established. On this foundation he has built up a further argument that now before this Tribunal, the employer is prohibited from raising any issue in regard to the charges levelled against the workman. To support his submission in this behalf, he has placed reliance on a decision of the Division Bench of the Delhi High Court in the case of Malkhan Singh v/s Union of India and others, reported in 1981 L.A.B. I.C. 1633.

17. Now, it is the contention of the employer that the workman's services were terminated for his un-satisfactory past record. Now, it may be recalled that initially an enquiry was held to investigate into charge of "late attendance and unauthorised absence from the place of work". However, as the enquiry was not concluded there is no finding report of the I.O., holding as to whether the aforesaid charge was proved or not. However, thereafter before issuing a notice of termination, the employer did not charge sheet the workman for any alleged misconduct and this position has been clearly admitted by Shri Moghe, the employer's Accountant in his cross examination at page 10. He has clearly admitted thus:

"It is true that no charge sheet was issued to the workman before termination of his services. No Departmental enquiry was concluded against him for proving the charges before terminating him from service. No charge was framed against him."

In Exb. 45 which is an order of termination, it has been clearly stated that the workman's services were terminated as his record of service was not satisfactory. Now, it is very significant that besides alleging that the workman had an unsatisfactory record, the employer has not alleged any misconduct which would have enabled him to dismiss the workman. This position is amply made clear in para. 12 of employer's Written Statement at Exb. 3 wherein it has been con-

tended thus:

"With reference to paragraphs 15, 16, 17 and 18, the Employer-Firm submits that no mis-conduct has been alleged against the workman nor was any mis-conduct made a foundation for passing the order dated 4th December, 1985 terminating the services of the workman. The Employer-Firm states and submits that the order of termination dated 4th December, 1985 was not passed by way of punishing the workman for any mis-conduct. The Employer-Firm came to a bona fide conclusion that the record of service of the workman was not satisfactory. It is submitted that the said conclusion was based on the past incidents set out in the paragraph 6 hereinabove. The services of the workman were terminated in terms of stipulation in this behalf namely clause 2 in the contract of employment dated 30th August, 1962 between the Employer-Firm and the workman."

18. Now, at the outset it will have to be stated that in the contract of employment there is absolutely nothing to support the employer's contention in this behalf. The appointment letter of the contract of service can be found at Exb. 52. It only speaks about probation and confirmation, and states that unless a workman receives a letter of confirmation, he will continue to serve on probation. Thus, as I have stated earlier the terms in clause (2) of Exb. 52 did not support the employer's contention.

19. Now, it has been contended in para. 12 that the services of the workman were terminated on account of un-satisfactory record and it has been further stated that conclusion in this behalf was arrived at in view of the incidents set out in para. 6 of the W. Statement. Now, in para. 6, the mis conduct alleged against the workman relates to the late coming in Subordination and refusing to carry out the orders of the superiors in respect of which he was given warnings from time to time. However, at the cost of repetition, I would say that the aforesaid allegations were not proved in the departmental enquiry which was abandoned and before issuing a notice of termination, not even a charge sheet was issued against the workman. Now, it has been urged by Shri Nadkarni that an allegation of "Un-Satisfactory" record amounts to a mis-conduct which requires to be established by holding an enquiry. Now, in the present case, the employer does not allege that there were any Standing Orders under which an action of termination was taken. Instead, the clear and un-equivocal recitals in the W.S. in para. 12 are that a shelter was taken of clause (2) of the Contract of Service which I have already referred to in the earlier part of this judgment. The terms and conditions in clause (2) of Exb. 52 are absolutely of no assistance to the employer. Then it is also on record that there were no Standing Orders on the footing of which the termination order was passed. The workman in his evidence at Exb. 6 has clearly stated, "There were no service regulation also. Party II-Copern has not framed any service rules nor they were displayed on the notice board." There is nothing in his cross examination to dislodge the aforesaid allegations made by the workman. As against this evidence, Shri Moghe has also not alleged anything indicating that some Standing Orders were made applicable to the workmen of his concern. In view of this state of affairs, it has been urged by Shri Nadkarni that the past un-satisfactory record amounts to mis-conduct or a stigma on the part of the workman and hence the employer is bound to prove the said misconduct by holding a domestic enquiry. To support his submission in this behalf, he has relied upon Supreme Court's ruling in the case of the Management of Utkal Machinery Ltd., v/s Workmen Santi Patnaik (S.C.) Labour Judgments, Vol. 9, page 492. In this case it has been observed in the head note thus:

"In the absence of any Standing Order with regard to punishment for misconduct the unsatisfactory work of an employee may be treated as misconduct and when the respondent was discharged according to the management for unsatisfactory work it should be taken that her discharge was tantamount to punishment for an alleged misconduct. If this conclusion is correct the management was not justified in discharging the respondent from service with-

out holding a proper enquiry."

It has been further held:

"The view taken by the Labour Court is correct that there was no proof of the alleged misconduct on the part of the respondent and there was no justification for terminating her services and in the face of complete absence of evidence in regard to unsatisfactory work of the respondent from service was malafide."

20. Now, it has been urged by Shri Cuncolienkar for the Employer that while terminating the services of the workman, a re-course was taken to the Standing Orders, and to support his submission in this behalf, he has placed reliance on a Supreme Court ruling in the case of Municipal Corporation, Greater Bombay v/s P. S. Nalawanker & Others, reported in 1978 Vol. II, L.L.J. at page 168. However, it has been rightly pointed out by Shri Nadkarni that in the said case, their lordships were considering the position of the Standing Orders of the Municipal Corporation which give certain powers to the corporation in the matter of termination. However, in the present case, it is a common ground that there were no standing orders or rules framed by the Employer and this fact has been clearly established by the workman's evidence at which I have referred to earlier. In view of this state of affairs, I hold that Shri Cuncolienkar's submission in this behalf cannot possibly be accepted.

21. Secondly, an attempt has also been made to submit that the present workman is a Mine workman employed in Mines and hence this Tribunal has no jurisdiction. A reliance has also been placed on a ruling of Patna High Court in the case of M/s Tata Iron and Steel Co., v/s P. Venkata Swamy, reported in 1976, LAB I.C. 1313. In the said case, it has been observed that garden-mazdoors and Malis working in the Garden attached to the bungalows occupied by any officer of a Mining Industry cannot be said to be persons employed in a mine. Now, it is really difficult to understand as to how the above referred observation are of any avail to Shri Cuncolienkar for urging that this tribunal has no jurisdiction. On the other hand, it has been urged by Shri Nadkarni that here is an Employer who is taking contradictory stands in different proceedings pending between the present parties. There appears to be some force in this submission. Besides, it has been rightly pointed out by Shri Nadkarni that no such plea was taken in the elaborate Written Statement filed on behalf of the employer. Had there been any such contention taken in the W.S., then normally there would have been an issue to that effect and perhaps it could have been considered as a Preliminary issue which could have gone to the root of the case. I, therefore hold that in the absence of any pleading in this behalf, the submission made by Shri Cuncolienkar in this respect cannot possibly be entertained.

22. Now, it is the grievance of the workman that after he succeeded in the industrial dispute raised for challenging his first order of transfer, the employer started harassing him in several ways. There appears to be a substantial force in this grievance made by the workman as can be seen from the several documents produced in his behalf. Shri Nadkarni has given a very long list of several documents in the form of letters and representations made by the workman to his higher authorities indicating that he was harassed from time to time, by not paying him his salary, Bonus and not allowing him even to sign the muster roll. He has invited my attention to Exb. 8, 9, 11, 16, 18, 20, 22, 23, 24, 25, 30, 31, 32, 33, 37, 38, 39, 40, 41, 42, 43, 44 and 51. Even a cursory perusal of all these documents clearly go to show that this workman was harassed or even tortured from time to time by the officers of the employer who, has complained by the workman, was not allowed even to sign the muster roll nor was he paid his monetary benefits although the said benefits were given to his co-workers or colleagues. Thus, relying on these documents, it has been rightly urged by Shri Nadkarni that since the workman succeeded in his case of transfer before the Industrial Tribunal, the Employer and his officers tried to victimise him in several ways but even then the workman

stood firm and tried to challenge each and every action of the employer's officers. I, therefore hold that this was a clear case of victimisation of the workman which ultimately culminated in terminating his services.

23. Now, Shri Cuncolienkar has urged that the workman's services were terminated mainly because he lost all confidence with the employer. In substance, he has tried to urge that this is a case of loss of confidence. To support his submission in this behalf he has relied upon a ruling of our High Court in the case of Shri Narayan N. Gupta v/s Padamjee Pulp and Paper Mills Ltd., and others wherein it has been held that the plea of 'Loss of Confidence' can be accepted when the same is based on good grounds and dependable materials. However, it has been rightly pointed out by Shri Nadkarni that no contention in this behalf has been taken in the elaborate Written Statement filed by the Employer. Since no contention was taken in this behalf no issue was framed and hence there was no possibility of leading any evidence to support the allegation of 'loss of confidence'. But even assuming for the sake of argument that the same submission is to be considered even in the absence of any pleading, still there is absolutely nothing in the evidence led by the employer to substantiate the aforesaid allegation. Moreover, it will have to be held that the workman was simply a clerk and was not holding a position of trust or confidence which could have been lost by his adamant attitude. It has been submitted that after the workman was transferred to Kakoda Garage in 1978, he was made to sit idle or sometimes given work of little importance not involving any type of confidence. Hence, it cannot be said that the workman was terminated for loss of confidence. Shri Nadkarni has also placed reliance on the decision of the Supreme Court in the case of L. Michal and others v/s Johnsons Pumps (India) Ltd., 1975, Vol. I, L.L.J., page 262. Thus, after having considered the submissions of the learned Advocates for both the sides, I hold that the employer has not made out a case of "Loss of Confidence" which would justify the termination order passed against the workman.

24. The last submission that has been made by Shri Cuncolienkar for the employer is in substance to the effect that at present Kakoda Garage is not working and hence the post of a clerk which this workman was holding has been abolished. However, it has been rightly pointed out by Shri Nadkarni that this submission has been made for which there is absolutely no basis or foundation in so far as neither in the written statement nor in the evidence led by him, there is even a mention regarding the abolition of the post of a clerk working in Kakoda Garage. Apart from that, had it been a fact that the termination was necessitated on account of the abolition of the clerk's post, then in the normal course of events, in the order of termination itself there would have been a clear reference to that circumstance. However, there is absolutely no reference to this allegation in Exb. 45. I, therefore hold that the submission made by Shri Cuncolienkar cannot possibly be entertained for justifying the employer's action in retrenching the present workman. Thus, in view of my conclusions in the foregoing paragraphs, I hold that the order of termination dated 4th December, 1985 of this workman, which was based on the consideration of the workman's past record is not at all legal and justified and the termination certainly amounts to victimisation and is of punitive nature. I, therefore answer the first & third issues in the affirmative and Issue No. 2 in the negative.

25. That takes me to consider to what reliefs the present workman is entitled to. Once it is held that the order of termination is not legal and justified, it follows that the workman would be entitled to a relief of reinstatement with full back wages and continuity of service. This position of law is now well settled by the several decision of the Supreme Court as also of other High Courts. Even then Shri K. V. Nadkarni has invited my attention to one of the recent ruling of our High Court (Goa Bench) in Writ Petition Nos. 180 of 1991 and 310 of 1991 in the case of Goa Bottling Co. Pvt. Ltd., v/s Pradeep

Sardessai & Another, wherein the above referred reliefs were granted to the workman whose services were found to have been illegally terminated. In the instant case, the workman was not guilty of any grave misconduct but the evidence on record discloses that whenever injustice was caused to him, he used to take immediate steps for redressing the same and hence probably the employer concluded that this workman was of a quarrelsome nature and besides, he was the leader of the Union. This belief entertained by the employer seems to have ultimately culminated in the order of termination. However, since the mandatory provisions enabling the employer to terminate the services of the workman, were not satisfied, and since there was no valid reason justifying the extreme penalty of retrenchment, I have found that this is a fit case where all the reliefs claimed by the workman deserves to be granted. I, therefore answer issue No. 4 accordingly and pass the following order.

ORDER

It is hereby declared that the action of the Employer - M/s Pandurang Timblo Industries, Margao, Salcete, Goa, in terminating the services of Shri Datta L. Naik, Clerk, with effect from 4th December, 1985, is not legal and justified and hence the Employer is directed to reinstate the workman in service and to pay him full back wages with continuity of service, within a period of two months from the date of this award.

No order as to costs. Inform the Government accordingly about the passing of the award.

Sd/-
M. A. DHAVALE
Presiding Officer
Industrial Tribunal

Order

No. 28/38/86-ILD

The following Award given by the Industrial Tribunal, Goa; Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

V. G. Manerkar, Under Secretary (Labour).

Panaji, 17th July, 1992.

IN THE INDUSTRIAL TRIBUNAL GOVERNMENT OF GOA AT PANAJI

(Before Shri M. A. Dhavale, Hon'ble Presiding Officer)

Ref. No. IT/26/86

Shri Vishwanath Shirodkar — Workman/Party I
V/s

M/s Chowgule & Company Pvt. Ltd. — Employer/Party II

Workman represented by Adv. A. Nigalye.

Employer represented by Adv. R. Kolwalkar.

Panaji, Dated: 29-6-1992.

AWARD

In exercise of the powers conferred by clause (d) of Sub. Section (1) of Sec. 10 of the Industrial Disputes Act, 1947, the Lieutenant Governor of Goa, Daman and Diu, by his order No. 28/38/86-ILD dated 26th Sept., 1986, has referred the following issue for adjudication by this Tribunal:

"Whether the action of management of M/s Chowgule and Company Private Limited, Mormugao Harbour, Vasco-da-Gama, Goa, in superannuating Shri Vishwanath Shirodkar, Master from 27-5-85 is legal and justified in view of the contention of the workman that his date of birth was wrongly recorded ?

If not, to what relief the workman is entitled ?

2. On receipt of this reference, a case at No. IT/26/86 was registered and notices were issued to both the parties in pursuance of which, they appeared and submitted their pleadings.

3. Party I-Shri Vishwanath S. Shirodkar (hereinafter called as the 'Workman') has filed his statement of claim (Exb. 2) wherein he has averred as follows: Party II-M/s Chowgule and Company Private Limited (hereinafter called as the 'Employer-Company'), is a limited company registered under the Companies Act, 1956 having its registered office at Mormugao Harbour. The Employer-Company is engaged in a mining industry i.e. excavation and sale of iron and manganese ore and owns several Mines in Goa. The Employer-Company is one of the biggest iron ore exporters in the State of Goa. For the purpose of transporting its iron ore from its plots to Mormugao Harbour for the purpose of export, the Employer owns a fleet of barges through which the said ore is transported. There are hundreds of employees employed by the Employer on the said barges who belong to different categories. The workman was one of the employee employed on the barges of the Employer-Company.

4. The workman first joined service in 1952 and his last posting was that of "Tindel-1" i.e. Master, on the date of termination of his service. It is the say of the workman that he performed his duties quite honestly and diligently and completely devoted himself to the work entrusted to him. However, in the year 1982 he learnt that the employer intended to superannuate him w.e.f. 27-5-1985 on the basis of the records purported to have been maintained by the employer. The workman further learnt that the said action was proposed to be taken on the basis that the workman's birth date was on 27-5-27, and the age of superannuation was 58 years. According to the workman, he was actually born in Anjuna Village of Bardez Taluka and as such he had not completed 58 years on 27-5-85. The registration of Births and Deaths was compulsory during the Portuguese regime in Goa. He therefore made a thorough search in the office of the Civil Registrar cum Sub-Registrar of Bardez, but he could not find his date of birth recorded in the said office. Hence, the workman presumed that his birth date was not recorded in any official record, due to his parents ignorance. Thereafter, he made enquiries with the elderly persons in his village who told him that he was born on 22-5-1930. Hence, the workman made an application to the Executive Magistrate of Bardez for recording his date of birth as 22-5-30 and subsequently received appropriate order in terms of the said application. Thereafter, the workman submitted that copy of the order to the employer under his letter dated 6-1-83. To this letter, the Administrative Officer of the Employer sent a reply dated 12th August, 1983 under which the workman was informed that since his date of birth was not recorded within one year from the date of his birth, the Certificate is not accepted as proof of his age. Thereafter, the workman made enquiries with his elder brother residing in Bombay who told him that he was born after the year 1930 and that his birth must have been recorded with the appropriate authority. Hence, the workman again searched

for the record in the office of the Civil Registrar of Bardez, where after extensive search, he found at Registration No. 988 of 1933 that his birth was recorded on 25-8-1933. Thus, the workman found that his real date of birth was 12-8-33. He, therefore obtained a copy of this receipt and submitted to the employer under his letter dated 26-10-84. It is the say of the workman that the employer ought to have considered the aforesaid evidence and should have found that the applicant would complete the age of 58 years on 12-8-91 and not on 27-5-85. According to the workman the certificate produced by him is the most authentic document concerning the age of the workman. However, that was not accepted and the employer retired him w.e.f. 25-7-1985. It is the further say of the workman that he was not aware as to whether any Rules or service conditions specifying 58 as the age of superannuation have been laid down to the members of the staff employed by the employer. Even assuming that there are such Rules, still they are not applicable to the workman. Under the Goa, Daman and Diu Shops and Establishments Act, no age of retirement has been prescribed for 'Commercial establishments'. On the other hand, it gives an option to the employees either to resign or retire after attaining the age of 60 years.

5. Thus, according to the workman, his alleged superannuation amounts to illegal termination of his services. He was not paid any retrenchment compensation or any other legal dues enumerated in the Industrial Disputes Act and hence he has prayed that the order passed by the Employer-Company should be struck down and he should be given the necessary reliefs.

6. Party II-Employer-Company by its Written Statement at Exb. 3 resisted the workman's claim contending inter alia as follows: It is true that Vishwanath Shankar Shirodkar was a Tindel-1 in the Barge Establishment of the Employer and he was superannuated with effect from 27th May, 1985. The service conditions of the barge-crew employed by the Employer were governed by the Standing Orders No. 18 of 1965, which have been duly certified by the Certifying Officer of Maharashtra, Gujarat, Goa, Daman and Diu and Regional Labour Commissioner (Central), Bombay. The relevant order (vide order 24 (v)) lays down that the employees shall retire on attaining the age of 55 years. However, they may be given extension upto the age of 58 years provided they are found suitable and medically fit. Notwithstanding the above order, the Employer adopted a practice not to retire any workman before he attains 58 years so long as he is found fit in the job.

7. The present workman was employed on 10th July, 1952 as a Tindel-A only because he was duly registered with the then Marine Department and was holding the identification card (CEDULA No. 5770), the xerox copy of which has been produced along with its official translation. It has been submitted that no person can be appointed or promoted to the post of Tindel (Captain of the Barge), without the certificate of competency issued by the Captain of Ports at present and by Marine Department's "Cedula" (certificate of competency) before the liberation of Goa. For obtaining the above referred certificate, the workman represented that his birth date was 27-5-27 and he had also shown a birth certificate to confirm the said date. The certificate issued by the Civil Registrar at Bardez also shows the workman's birth date as 27-5-1927. As back as 11-7-52 the present workman along with his witnesses made a solemn statement under Art. 136 of Code of Civil Registration (Codigo do Registo Civil). The same is at Annexure 'C' and the certificate at Annexure 'D' together with its official translation at Annexure 'E'. The above mentioned Standing Order No. 24 (ii) (d) lays down that every person shall produce before appointment documentary evidence about his date of birth. This will be treated as final for services of the Company and it will not be permissible for the person concerned to try for its revision later. (vide annexure 'F'). The said Standing Orders were finally certified on 11-11-1965 after giving the Employees and the Union/Elected representatives an opportunity of being heard and the

said Standing Orders were duly exhibited on the Notice Board of the employer and as such, they are binding on both the parties. The present workman signed a declaration dated 30-9-1958 and confirmed his date of birth as 27-5-1927 (Annexure 'G'). It has been contended that during the Portuguese regime in Goa, the age of majority was 21 years and minors could not be employed, in any concern. Thus, at the time of his initial appointment, the workman declared himself to be a major. Thus the workman by his own declaration, intentionally ensured the Employer to believe that his birth date was 27-5-1927 and on that representation, he secured a job and hence the workman is estopped from contradicting his own statements in regard to his birth date. Thereafter, the workman submitted two more certificates, one showing his birth date as 22-5-1930 (Vide Annexure 'I') and the other showing his birth date as 12-12-1933. Thus, the workman submitted three different certificates showing his three different birth dates.

8. It has been further contended that on the basis of the birth certificate which he had produced initially, the workman's birth date was accepted to be 27-5-1927 as correct, and on that basis, he was legally superannuated w.e.f. 27-5-1985. Hence, it has been contended that the workman is not entitled to any relief whatsoever and hence his claim should be rejected.

9. Thereafter the workman filed a rejoinder at Exb. 4 wherein he again controverted all the contentions of the employer appearing in his Written Statement, and reiterated his assertions made in Exb. 2.

10. On these pleadings, my learned Predecessor Shri S. V. Nevagi framed the issues at Exb. 5. However, thereafter an application at Exb. 6 was submitted on behalf of the workman praying for amending his claim statement by introducing a clause that the Industrial Employment (Standing Orders) Act, was not applicable, to the establishment of Party II- Employer, on the date of termination of workman's services. This application was opposed by the Employer by his say at Exb. 7. However, thereafter, my learned Predecessor by his order below Exb. 6 allowed the workman's application for amending the statement of claim by introducing one more clause, stated in Exb. 6. Thereafter, the Employer-Company filed an additional Written Statement (Exb. 8) contending therein that the Industrial Employment (Standing Orders) Act was applicable to the Establishment of the Employer-Company with effect from 11-11-1965 when the same were duly certified by Shri S. M. Dikhale, Certifying Officer for Maharashtra, Gujarat, Goa, Daman and Diu and Regional Labour Commissioner (Central Bombay) under Industrial Employment (Standing Orders) Act, 1946. It was also contended that more than 28 workmen were duly retired on attaining the age of superannuation. Thereafter, my learned Predecessor framed the following issues at Exb. 9.

ISSUES

1. Whether the workman had given the date of his birth as 27-5-1927 at the time of his appointment on 11-7-1952 as alleged?
2. Whether the workman had then produced the birth certificate and whether his witnesses had then solemnly affirmed about the age as contended by Party II in para 5 of the Written Statement?
3. Whether the workman by a signed declaration dated 30-9-58 had confirmed the above date of birth as alleged in para VIII of Written Statement?
4. Whether under Portuguese rules majors attaining the age of 21 years or above were eligible for appointment and whether the workman was appointed on 11-7-1952 by treating him as major as alleged?
5. If so, whether the workman is now estopped from challenging the date of birth which is registered in the records of the

Company?

6. Whether the workman has properly explained the circumstances under which he subsequently produced evidence showing his date of birth as 22-5-1930 or 12-8-1933?
7. What is the correct date of birth of the workman and whether the action of the management superannuating the workman on 27-5-1985 calls for any interference?
8. What reliefs, if any, is the workman entitled to in this case?

11. My findings on the above issues are as follows for the reasons stated below:

1. In the affirmative.
2. In the affirmative.
3. In the affirmative.
4. In the affirmative.
5. In the affirmative.
6. In the negative.
7. The correct birth date of the workman is 27-5-1927 and hence the employer's action is perfectly legal and just.
8. The workman is not entitled to any relief whatsoever.

REASONS

12. The rival contentions of the parties to this dispute have been stated in the opening paragraphs of this judgment, which need no further repetition. Now, some of the facts which are either admitted, or which can otherwise be taken as duly proved from the evidence on record, need be stated in the beginning before considering the submission made by the learned Advocates for both the sides.

13. Party I - Workman by name Vishwanath Shirodkar joined the services of Party II - Employer M/s Chowgule & Company Private Limited, as a Tindel-I in the year 1952. At the time of his appointment, he submitted his birth date as 27-5-1927. This birth date was accepted by the Employer - Company and relying on the same, the Company found that the workman attained the age of 58 years on 27-5-1985. Now, it is the contention of the Employer - Company that the workman employed in its Concern are governed by the Standing Orders under which the age of retirement for every workman is 55 years. However, by way of concession, it was the practice followed by the Company to continue the services of the workman till they attain the age of 58 years provided they are found physically and mentally fit. Thus, in the present case also, the Employer - Company gave extensions till 58 years to the present workman and ultimately superannuated him from 27-5-1985. However, it is the workman's contention that the birth date which he gave at the time of entering into service was not a correct one and instead he first made a representation stating therein that his correct birth date was 22-5-1930. In support of his claim in this behalf he produced an order from the Executive Magistrate at Bardez. However, even then, the workman was not satisfied with his second birth date and hence he again submitted some proof showing that his correct birth date was 25-8-1933. Thus, relying on this birth date, it is his contention that he should have been retired w.e.f. 25-8-91. However, the Employer - Company did not accept the subsequent proofs in regard to the workman's birth date and eventually superannuated him w.e.f. 27-5-1985. It is on this established state of affairs, I now advert myself to the submissions made by the learned Advocates for both

the sides.

14. Now, on the footing of the above referred established state of affairs, it is obvious that the workman before me claims to have been born on three different dates at three different places. Significantly, by the passage of time he claims to have become not older but younger, and the margin of difference of age is more than 3 years at every time. In view of the stage of affairs, the moot question that calls for determination in this case is to find out the real or the correct birth date of the present workman. However, before doing that, I think it necessary to consider the main objection that has been raised by Shri Nigalye for the workman. Shri Nigalye has urged that the Standing Orders issued by the Employer- Company are not applicable to the present workman and instead it is his submission that the Employer's concern is a Commercial Establishment to which Goa, Daman and Diu Shops and Establishment Act applies, wherein no age of retirement has been prescribed. Now, it has been rightly urged by Shri Kolwalkar, the learned Advocate for the Employer, that the aforesaid contention raised on behalf of the Workman is an after thought, which fact by itself is more than enough to reject the same. Now, significantly, this contention was not taken at the earliest possible opportunity i. e. in the claim statement itself.

15. Thereafter, by an application at Exb. 6, an amendment was sought to introduce one more clause showing that the Standing Orders are not applicable to the present workman. Now, although this amendment was allowed and the employer was also permitted to file additional written statement, still no issue has been framed by my learned Predecessor in this behalf, and hence it has been rightly urged by Shri Kolwalkar that Shri Nigalye's argument should not be considered. However, this being a point of law, I think it necessary to consider the same even in the absence of any specific issue.

16. Now, the first objection that has been raised by Shri Nigalye for the workman is in substance to the effect that the Standing Orders of the Employer-Company are not applicable to the present workman in as much as the employer's concern is a commercial establishment and not an industrial establishment where more than 100 workers are employed. Now, section 1 sub. clause (3) lays down that the Industrial Employment (Standing Orders) Act, 1946 (hereinafter called as the Standing Orders Act for brevity) applies to every industrial establishment wherein 100 or more workmen are employed. Now, to support his submission in this behalf Shri Nigalye has referred to the workman's statement at Exb. 10 wherein he has stated, "Normally, there are 9 workmen working on the Barge and if the size is large, the number is 11 persons". Now, the above referred statement of the workman is absolutely of no assistance to Shri Nigalye because it presupposes as if M/s Chowgule & Co. Pvt. Ltd., has only one Barge where 9 to 11 persons are employed. In fact, M/s Chowgule has a fleet of barges where more than 100 workmen are employed and this fact has been unequivocally admitted by the present workman even in his statement of claim in para. 2 which requires reproduction adverbium. He has averred thus:

"Employer-Company is one of the biggest iron ore exporters in the State of Goa. ... The Employer owns a fleet of barges, through which the said ore is transported. There are hundreds of employees employed by the Employer on the said barges, who belong to different categories etc..... Shri Vishwanath S. Shirodkar was one of the said employees employed on the barges of the Employer-Company."

17. At this stage, it is needless to say that M/s Chowgule & Company is an industrial establishment engaged in mining activities. The above referred admissions are more than enough to dis-lodge Shri Nigalye's argument on the 1st point which has been raised for urging that in view of the provisions contained in Section 1(3) of the Standing Orders Act, the Standing Orders are not applicable to the present workman.

18. Secondly, it has been urged that a provision made in the Standing Order for the age of retirement is null and void in as much as the schedule attached to the Standing Orders Act, does not include any clause for age of retirement. Now in order to appreciate this argument a reference will have to be made to the Standing Orders in this case. They are produced at Exb. 20. They have been certified by Mr. S. M. Dikshale, Certifying Officer for Maharashtra, Gujarat, Goa, Daman and Diu and Regional Labour Commissioner (Central), Bombay. He is attached to the Government of India, Ministry of Labour and Employment. These orders were certified on 10-11-65. The Certifying Officer after giving employer and the union elected representatives an opportunity of being heard as per Sec. 5(2) of the Industrial Employment (Standing Orders) Act, 1946 finally certified the draft standing orders submitted by M/s Chowgule Company Pvt. Ltd., Mormugao Harbour Goa, for adoption in his barge crew establishment at Mormugao Harbour Goa. Clause 24 appearing on page 13 of Exb. 20 lays down provisions in regard to, "General Conditions of Services". Sub. clause (v) with which we are concerned lays down thus: (v) "Employees shall retire on attaining the age of 55 years. However, they may be given yearly extension upto the age of 58 years provided they are found suitable and medically fit."

Sub. clause (vi) lays down that, "an intimation of an impending retirement will be given to the workman, six months previously". Now, it has been urged by Shri Nigalye that the schedule appended to the Standing Orders Act does not include any provisions for superannuation or retirement. Sub. clause 8 of the schedule lays down that the standing orders can be made in respect of, "Termination of employment and the notice thereof to be given by the employer and the workman". Now, at the outset, it will have to be stated that the aforesaid grievance made by Shri Nigalye cannot be entertained by this Tribunal for the first time in this reference in as much as the Tribunal is called upon to consider whether the order superannuating Shri Shirodkar from 27-5-85 is legal and justified. Therefore, the scope of this adjudication is restricted only for finding out the legality or otherwise of the employer's order retiring Shirodkar from 27-5-85. Now, if at all, the workman wanted to raise an objection to clause 24 appearing in the Standing Orders, his remedy would have been under the provisions contained in the Standing Orders Act itself. Sec. 5 of the Act lays down provisions for, "Certification of the Standing Orders". These provisions have been fully complied with by the Certifying Officer as can be seen from Exb. 20. Now, Section 6 of the Act lays down provisions in regard to appeal as follows:

Appeals:- (1) Any person aggrieved by the order of the Certifying Officer under sub-section (2) of section 5 may within thirty days from the date on which copies are sent under sub-section (3) of that section, appeal to the appellate authority, and the appellate authority, whose decision shall be final, shall by order in writing confirm the standing orders either in the form certified by the Certifying Officer or after amending the said standing orders by making such modifications thereof or additions thereto as it thinks necessary to render the standing orders certifiable under this Act."

19. Now, in the present case, it is an admitted fact that no appeal was preferred by any of the workmen or by their union alleging that clause 24 (v) is null and void and the same should be deleted in view of the fact that in the schedule itself no provisions have been made for superannuation. On the other hand, these Standing Orders which were certified in the year 1965 seem to have been unhesitatingly observed and were acted upon by the Employer-Company as can be seen from the patent fact that pursuant to the aforesaid provisions as many as 28 workers were made to retire from 1984 to 1988 as can be seen from an annexure appended to the additional written statement at Exb. 8. In view of this state of affairs, the workman is estopped from challenging the validity of clause 24 appearing in the Standing Orders. This is one aspect of the case and secondly, in as much as no appeal was preferred, as contemplated in Section 6 of the Standing Orders

Act, the workman is not entitled to raise this objection in this reference; which is restricted for finding out as to whether the order of superannuation is legal and proper. I am fortified in this conclusion of mine by some of the rulings of different High Courts, to which a reference will have to be made, in brief.

20. In a ruling reported in 1975, LLJ 100 (Md. Yasin and Presiding Officer, Industrial Tribunal, Orissa), it has been held that without filing an appeal and without taking steps to modify standing orders, workman held not entitled to challenge the standing order. In the head note on page 101 it has been observed thus:

"Whether a particular standing order in respect of a subject-matter covered by item No. 8 of the Schedule is fair or not is left to be determined by the certifying officer. The workmen are parties to the certification proceedings. If they are aggrieved by the order of the certifying officer, it is open to them to file an appeal. There is also provision for either party asking of modification of the standing orders after the lapse of a particular period of time. Without availing oneself of all these remedies, it is not open to the workman, where his services are terminated in pursuance of a certified standing orders to turn round and contend now that the particular standing orders is unfair."

Allahabad High Court has also taken a similar view in a ruling reported in 1979 LAB IC (NOC) 150, where the Division bench of Allahabad High Court has observed thus:

"Where controversy based on the application of the Standing Orders was not raised on behalf of the petitioner before the Labour Court, the petitioner would be debarred from canvassing violation of the provisions of Standing Orders in Writ Proceedings. (underlining is mine for emphasise).

21. Thus, on reading these observations, it is absolutely clear that even the High Court of Allahabad declined to allow the workman to challenge the validity of the Standing Orders even in its Writ jurisdiction. This being so, it follows that this Tribunal would not be competent to allow the workman to canvass that clause 24(v) of the Standing Orders is null and void. Thus, on this ground alone, I am of the view that Shri Nigalye's argument deserves to be rejected.

22. Even assuming for the sake of argument that the workman should be allowed to challenge the validity of clause 24(v) of the Standing Orders, still it will have to be observed that there is no force in the challenge given by Shri Nigalye. Now, it is the submission of Shri Nigalye that clause 8 in the schedule annexed to the Standing Orders Act lays down that the provision shall be made in respect of, "Termination of employment and the notice thereof to be given by the employer to the workman". Thus, in the estimate of Shri Nigalye superannuation or retirement is not covered by clause 8 of the schedule, and to support his submission in this behalf, he has relied upon two rulings to which a reference will have to be made in brief. He has referred to a case reported in 1970 LAB I.C. 1000 (Vo. 3) (Saroj Kumar Ghosh v. Chairman, Orissa State Electricity Board), wherein the head note runs thus:

"The clause 'termination of employment' in item 8 of the Schedule cannot be equated with the word superannuation. The dictionary meanings of the two also do not indicate that there is any similarity in the two processes."

A reliance has also been placed by Shri Nigalye on some of the observations of their lordship of the Supreme Court in the case of Rohtak and Hissar Districts Electric Supply Co. Ltd., v. State of U. P. & Ors, reported in AIR 1966, S. C. 1471. In the head note (c) on page 1472, it has been laid down thus:

"If, however, it appears to the appropriate authorities that having regard to the relevant facts and circumstances, it would not be unfair and unreasonable to make a provision for a particular item, it would be competent for them to do so, but the employer cannot insist upon adding a condition to the Standing Orders which relates to a matter which is not included in the schedule. Section 3 (2) of the Act specifically requires that the Standing Orders shall be, as far as practicable, in conformity with the model."

23. Now, as far as the first ruling in the case of Saroj Kumar (Supra) is concerned, it will have to be stated that same High Court i.e. Orissa High Court has taken a different view in a ruling reported in 1975 (Vo. I) LLJ., 100 in the case of Md. Yesin v. Presiding Officer, Industrial Tribunal, Orissa. Now, very significantly, the above referred two authorities, one of Orissa High Court and the other of Supreme Court have been considered and distinguished by their Lordships in this case and referring to several other rulings, their lordships have finally concluded as stated in para. 20 on page 17 of this judgment. Now, after distinguishing the aforesaid two rulings, their Lordships have further observed on page 106 in para. 7 thus:

Para. 7 "No decision of the Supreme Court has been cited before us which has specifically laid down that after the amendment of S. 4 of the Act in 1956, it is not open to a certifying officer, even if he holds as fair and reasonable, to certify a standing order, if it relates to a subject not covered by any of the items in the Schedule. The compulsion of the statute appears to be that the standing orders shall make provision for such of the matters set out in the Schedule with the additional matters prescribed by the Government as are applicable to the Industrial establishment in question. If any of the matters so set out in the Schedule are applicable to the industrial establishment in question, the employer is bound to make provision for them. It does not mean that provision cannot be made for any additional matters at all, provided the provisions so made is in the opinion of the certifying officer fair and reasonable."

24. Now, a view contrary to the view taken by the Orissa High Court in the case of Saroj Kumar (Supra) has been taken by Madras High Court in the case reported in AIR, 1961, Madras, 107 (Management of the "Hindu" Madras v. Secretary, Hindu Office and National Press Employer Union) In this case, it has been observed, 'The expression 'Termination of Employment', in item No. 8 is wide enough to include an retirement at the age of superannuation.'

25. Thus, after considering the ratio of the above referred two rulings, I am of the view that Shri Nigalye's submission that the clause 24(v) of the standing order is null and void will have to be rejected. I, therefore, hold that all the workmen serving with M/s Chowgule & Co., are governed by the Standing Orders certified in the year 1965 which have been uninterruptedly followed or observed by the employer and employees during the last more than 25 years. Now, it is needless to say that the Standing Orders certified by the competent authority have the force of law like any other statutory instrument (vide 1979 LAB I. C. 319 Biswanath Das and others, v. Ramesh Chandra Patnaik and another). Their lordships of the Supreme Court in the case of Avery India Ltd. v. Hind Industrial Tribunal, W. B. & others have further observed thus:

"A provision as to age of retirement in the standing orders of an establishment would apply to all employees irrespective of whether they entered into service prior to or subsequent to the coming into force of the standing orders and even though there was no such provision for retirement in the past. AIR 1970 SC 512 and AIR 1966 SC 808 and AIR 1972 SC 120, Foll."

Thus, in the instant case, although the workman joined service in 1952, still he will be governed by the S. Os.

26. After having considered the objections taken by Shri Nigalye on the legal aspect of the case, I now, proceed to consider the factual aspect.

Now, the evidence in this case consists of the statement of the workman who has produced the relevant documents. On behalf of the Employer-Company its officer by name Shri B. M. Salunke has been examined at Exh. 11 and he has also produced the relevant documents. Now, it is a common ground that the workman joined his service on 10-7-52. Now, in the record of this case, a photo copy of one document known as "CEDULA" has been produced and the workman in his cross examination has admitted that he obtained this Cedula when he joined the services. He has also stated that he had appeared before the Capt. of Ports for obtaining this certificate, and he has further admitted that in this certificate his birth date is shown as 27-5-1927. Finally, he has admitted that he produced a certificate of birth which was prepared on 11-7-1952. Now, it is the workman's assertion that when he joined his service, he could not secure a certificate showing his birthdate. He admits that in the Portuguese regime, it was obligatory for the parents to inform the concerned authorities about the birth of a child. However, on account of his parent's ignorance no entry was made in the official record. However, to bridge over this difficulty he secured a birth certificate on the basis of an affidavit which he and his witnesses had sworn before the competent authorities. The same can be found at Annexure 'E' wherein the workman's birthdate has been shown as 27th May, 1927. On this affidavit sworn by several persons a certificate was issued to the workman vide Annexure 'D' showing his birthdate as 27-5-1927. The workman produced this certificate at the time of giving his bio-data to support the entry in column No. 4 relating to the birthdate. At the cost of repetition, I would say that in this column the workman's birth date has been entered as 27-5-1927. Over and above, the workman again filled in one more form which can be found at Annexure 'G'. In this form also, he showed his birth date as 27-5-1927. This was confirmed in December, 1958. Now, this document has been signed by the present workman on 30-9-1958. Thus, relying on these documents, the workman's birth date was shown as 27-5-27 in the official record maintained by the Employer-Company and on this footing, a notice was served upon him. Now, at this stage, a reference to the prevalent practice observed in this concern will have to be stated. Now, although the age of retirement is 55 as per the Standing Orders, still invariably all the workmen were continued till the age of 58 years who were found to be physically and mentally fit. Now, it is the say of the workman that when he came to know about his intended retirement he for the first time, came to know that the birth date recorded in the official record is correct. Hence, he again started searching out for the record to obtain a birth certificate. Now, it is the say that he was told by some persons that his birth date as noted previously was not correct. He, therefore, filed an affidavit which can be found at Exh. 19 wherein he made a statement on oath that his birth date was 22-5-1930. On the basis of this affidavit, he was given a second certificate Exh. 19 showing his birthdate as 22-5-30. Thus, by submitting this certificate, he made a representation to the Employer, but the same was turned down. Even then the workman did not seem to have been satisfied with his 2nd certificate showing his birth date as 1930, and hence, he again endeavoured to obtain a 3rd certificate which has been produced at Exh. 13. This shows the workman's birth date as 12-8-1933 and relying on this certificate, he attempted to get an extension till 1991. However, the company did not accept any of his subsequent certificates and held that since the official record maintained at the time of the workman's entry into service shows the workman's birth date as 27-5-1927, he must retire on 27-5-1985 on completion of 58 years.

27. Now, considering the factual aspect in this case, it is absolutely clear that we have before us, a workman who, for the first time in the year 1982, was awakened to find out that his birth date which he gave at the time of entering into service was not correct. Hence, he endeav-

oured to secure not only one, but two certificates showing that he was once born in the year 1930 and secondly in the year 1933. Thus, on the face of it, it will have to be concluded that this workman, in order to suit his purpose and to substantiate his claim for a later date of superannuation he endeavoured to obtain two more certificates from the same authority by filing contradictory affidavits. This attitude on the part of the workman is more than enough to conclude that he has absolutely no regard for truth and he manoeuvred to obtain contradictory certificates one after another, from the same authority. Now, there are few clinching circumstances which will go to prove that the first birth date given by him when he joined the service must be the correct date, or atleast the same should be taken as correct in view of certain glaring facts. During Portuguese regime, the age of majority was 21 as noted in Art. 97 of the Portuguese Civil Code. It has been also pointed out by Shri Kolwalkar that even during Portuguese regime no minor i.e. a person below 21 years, was allowed to be engaged in any industrial concern. If his last birthdate i.e. 12-8-33 is to be accepted, then it follows that in the year 1952 when he joined service he was a boy hardly 19 years old. As such, he could not have been employed by M/s Chowgules. Moreover, before joining M/s Chowgule & Company, this workman was serving somewhere else. However, he has an audacity to deny this fact. In his cross examination he has stated that he was not working anywhere on barge or boat. However, Exb. 18 which is a form giving the bio-data of a workman and which has been signed by the workman clearly shows that he was serving with M/s Bhagulal & Co. Ltd., for 2 years (vide para. 10 of Exb. 18). This documentary evidence further shows that he must have been major even two years back before he joined M/s Chowgule & Co. This state of affairs clearly discloses that since he was born in the year 1927 he must be a man of 25 years when he joined M/s Chowgule & Company in the year 1952 and he must have been above 21 years when he joined M/s Bhagulal & Co., as stated by him in Exb. 18. There is also one more circumstance to support this conclusion of mine. The workman has admitted in his cross examination that he obtained "CEDULA" (Exb. 15), wherein his birthdate is shown as 27-5-1927. He has also admitted that before obtaining the Cedula from the Marine Department office, he had produced a certificate of birth which was prepared on 11-7-52. Thus, on the basis of this certificate, he obtained "Cedula" and secured a job with somebody else before he joined M/s Chowgule & Company.

28. Shri Kolwalkar has also invited my attention to the provisions contained in clause 24 of the Standing Orders which relates to the "General Conditions of Service". Sub. Clause (II)(d) lays down thus; "Every person shall produce before appointment, documentary evidence about his date of birth. This will be treated as final for services of the Company and it will not be permissible for the person concerned to try for its revision later on." Thus, regard being had to this provision the workman cannot now be allowed to agitate that his birthdate which he has previously given while entering into service should be revised. This is one aspect of the case. Secondly, it has been rightly urged by Shri Kolwalkar that the workman, while entering into service represented to the Company that his birthdate was 27-5-1927. On that basis he secured the job and thereafter he kept silence till he completed the age of 55 in the year 1982. In para. 4 of his claim statement he has averred that sometime in the year 1982 he learnt that the employer intended to superannuate, him w.e.f. 27-5-1985. Thus, for about 30 years, the workman did not raise any contention; and hence the Employer-Company acted on his representation. In view of this established state of affairs, it has been rightly urged by Shri Kolwalkar that the workman is now estopped from contending that his birthdate is something different than what he had given in the begining. To support his submission in this behalf, he has invited my attention to a ruling reported in 1974 LAB I.C., 1493 (Makradhwaj

Singh V. State of M. P.). In that case, the workman himself had declared that his birthdate was 8-4-1915 instead on 1917 on the basis of matriculation certificate. This entry remained un-challenged for 13 years till the issue of order of retirement. Hence it was held, "Under the circumstances the employee acquiesced in the entry for 13 years and allowed the Government to act on the presumption of its correctness. He was therefore estopped by negligence from challenging the correctness at the time of retirement order". To the same effect, there are the observations of the Punjab High Court in the case reported in AIR 1985 NOC 223 (PUNJ & HAR). In that case, there was a difference of 13 years in two dates of birth given by plaintiff i.e. one given at the time of his entering service and the other now claimed. The mistake was not clerical and hence it was held that the plaintiff by his acts was debarred from filing a suit. Thus, in view of the aforesaid observations, I uphold the arguments advanced by Shri Kolwalkar that the workman is now estopped from challenging the correctness of his birthdate; which he had himself given as 27-5-1927 when he entered in the employer's service. In view of this conclusion, I hold that although after completing the age of 55 years, the Employer-Company would have been justified to superannuate him on 27-5-1982, still, by way of concession; he was given extension for 3 years and ultimately he was made to retire on 27-5-1985. I, therefore hold that the employer's order is perfectly legal and justified and hence the workman is not entitled to any relief whatsoever. I, therefore, answer the issues accordingly and pass the following award.

ORDER

It is hereby declared that the action of the management of M/s Chowgule and Company, Private Limited, Mormugao Harbour Vasco-da Gama, Goa, in superannuating Shri Vishwanath Shirodkar, Master from 27-5-1985 is legal and justified; and hence Party I-Workman is not entitled to any relief whatsoever.

No order as to costs.

Inform the Government accordingly about the passing of the award.

Sd/-

M. A. DHAVALA
Presiding Officer
Industrial Tribunal

Department of Mines

Notification

No. 5/5/90-MINES

In exercise of the powers conferred by clause (e) of rule 2 of the Goa, Daman and Diu Minor Mineral Concession Rules, 1985 (hereinafter referred to as the "said Rules"), the Government of Goa hereby authorises the Industries Officers/Extension Officer(Industries) of the Directorate of Industries & Mines to exercise the powers of the Inspecting Officer under rules 46, 48, 62(3), (4), (5), (6), (7) and (8), 63 and 64 of the said Rules, with immediate effect.

By order and in the name of the Governor of Goa.

S. K. Jain, Joint Secretary (Mines).

Panaji, 5th January, 1999.

Department of Public Assistance (Provedoria)

Institute of Public Assistance

Order

No. 2-22-98-IPA/2737

Government is pleased to reconstitute the "Visiting Committee for Old Aged Homes and Orphanages" run by the Institute of Public Assistance (Provedoria) consisting of the following members, with immediate effect:

1. Shri Shivdas A. S. Verenkar, (Hon'ble Minister for Provedoria) — Chairman.
2. Smt. Fatima de Sa, (Hon. Minister for Transport) — Member.
3. Shri Manohar Parrikar, M. L. A. — Member.
4. Shri Shambhu Bhau Bandekar, (Provedoria Council Member) — Member.
5. Shri Anant J. Shetgaonkar, (Provedoria Council Member) — Member.
6. Member of Legislative Assembly where Old Aged Home is situated — Member.
7. Shri Jagdish Wagh, U. N. I., Panaji — Member.
8. Shri Irvin Soares (Councillor, Ponda Municipal Council) — Member.
9. Prof. Prakash G. Naik — Member.
10. Shri Madhav Sahakari, Panch (Curti-Kandepar Panchayat) — Member.
11. Editor, The Navhind Times — Member.
12. Director of Social Welfare — Member.
13. The Director of Provedoria or the Senior Officer of the Institute representing the Director — Convenor.

The term of the Committee shall be for a period of one year.

The Visiting Committee shall visit Old Aged Homes atleast once in a period of three months or as deemed fit by the Government.

The non-official members shall be paid remuneration @ Rs. 100/- (Rupees one hundred only) for each visit and shall also be entitled for mileage allowance as admissible to Grade-I Government Officer.

This supersedes the earlier Orders No. 24/9/94-FIN (R&C) dated 27-2-1996 and No. 24/9/94-FIN (R&C) dated 31-3-1997.

By order and in the name of the Governor of Goa.

S. D. Dalgvi, Director of I. P. A. and Joint Secretary (Provedoria).

Panaji, 17th November, 1998.

Department of Public Health

Order

No. DHS/SP.CELL/Secret/98-99/36

In supersession of all the earlier Orders Government is pleased to reconstitute the Apex Committee under the Chairmanship of His Excel-

lency the Governor of Goa to monitor HIV/AIDS Control in Goa under the AIDS Control Programme with the following composition:—

1. His Excellency, the Governor of Goa — Chairman.
2. Chief Secretary — Member.
3. Secretary (Finance) — Member.
4. Secretary (Health) — Member.
5. Secretary (Industries & Labour) — Member.
6. Dean, Goa Medical College — Member.
7. Director of Health Services — Member.
8. Director of Panchayat — Member.
9. Director of Municipal Administration — Member.
10. Station Director Doordarshan — Member.
11. Station Director All India Radio — Member.
12. Director of Tourism — Member.
13. Prof. V. Rege, Head of Dermatology, Goa Medical College — Member.
14. Prof. Bhaskar Naik, NSS Coord for Goa University — Member.
15. Dr. Sidney Pinto do Rosario, Porvorim — Member.
16. Dr. Pedro Monteiro, Panaji — Member.
17. Dr. Damodar Bhonslal, St. Cruz — Member.
18. Kum. Loretta Pinto, Positive People (NGO) — Member.
19. President, I. M. A. State Branch — Member.
20. President of Rotary Club of Panaji — Member.
21. President of Lions Club of Panaji — Member.
22. Representative of Army — Member.
23. Representative of Navy — Member.
24. Dy. Director (AIDS) — Member Secretary.

By order and in the name of the Governor of Goa.

Dr. Arvind V. Salekar, Ex-Officio Joint Secretary.

Panaji, 5th October, 1998.

Order

No. 21/24/97-DHS

Government is pleased to accept the resignation tendered by Dr. J. M. J. Souza Mergulhao from the post of Junior Surgeon at Community Health Centre, Canacona w.e.f. 1-7-98 (B. N.).

By order and in the name of the Governor of Goa.

Dr. A. V. Salekar, Ex-Officio Jt. Secy/DHS.

Panaji, 12th October, 1998.

Order

No. 7/19/91-I/PHD

Read: Govt. Order No. 7/19/91-I/PHD dated 31-7-1997.

The Government of Goa is hereby pleased to rescind the Order No. 7/19/91-I/PHD dated 31-7-1997, published in the Official Gazette No. 25 Series II dated 18-9-1997, with immediate effect.

By order and in the name of the Governor of Goa.

Dr. A. V. Salekar, Ex-Officio Jt. Secy./DHS.

Panaji, 16th October, 1998.

◆◆◆
Goa Medical College

Order

No. 5/64/83-PHD/6915

Government is pleased to accept the notice dated 18-12-97 tendered by Dr. R. N. Shetti, Professor and Head of Department of Anaesthesiology, Goa Medical College, Bambolim for voluntary retirement under rule F.R.56(K)(1) of FR SR (Part I) waiving the Second condition of the said rule i.e clause of entry into service and relieve him with effect from 1-3-1998 (B. N).

This supersedes the order No. 5/64/83-PHD dated 26-2-98 and corrigendum dated 4-6-98.

By order and in the name of the Governor of Goa.

Dr. M. N. PAL, Dean/Ex-Officio Addl Secy.

Bambolim, 29th October, 1998.

Order

No. 8/12/95-II/PHD/7206

On the recommendation of the Goa Public Service Commission vide Letter No. COM/II/I/130(6)/93 dated 22-10-98, Government is pleased to promote Dr. Sandesh Chodankar, Lecturer in E.N.T, to the post of Asstt. Professor in E. N. T., Goa Medical College, Bambolim on regular basis in the pay scale of Rs. 10,000-325-15200+ N.P.A with immediate effect.

Dr. Sandesh Chodankar need not be on probation since the promotion is from one Group "A" to another Group "A" post.

By order and in the name of the Governor of Goa.

Dr. M. N. Pal, Dean/Ex-Officio Addl Secy.

Bambolim, 11th November, 1998.

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Goa Dental College

Order

No. 11/3/98-IV/GDCH/1710

Read: Memorandum No. 11-3-89-IV/PHD/3/1198 dated 8-9-98.

On recommendation of Goa Public Service Commission vide their letter No. COM/I/5/14(12)/89 dated 13th August, 1998, the Govern-

ment is pleased to appoint Dr. Shama V. Patil to the post of Lecturer in Oral Medicine/Diagnosis in Goa Dental College & Hospital, Bambolim on regular basis on an initial pay of Rs. 8000/- (Rupees eight thousand only) in the pay scale of Rs. 8000-275-13500 plus N.P.A. and other allowances with effect from the date of her joining the above post as per the terms and conditions contained in the memorandum referred to above Dr. Shama V. Patil shall be on probation for a period of two years.

Dr. Shama V. Patil has already been examined by the Medical Board of the Goa Medical College and found medically fit. His appointment is subject to verification of her character and antecedents.

By order and in the name of the Governor of Goa.

Dr. R. K. Singh, Ex-Officio Addl Secy./Dean.

Bambolim, 9th November, 1998.

**◆◆◆
Department of Tourism****Notification**

No. 8/1/98-TDC (T)/2339

Read: (1) Notification No. 8/1/86-TDC(T) dated 20th June, 1995, published in Official Gazette, Series II, No. 14 dated 6th July, 1995.

(2) Notification No. 8/1/98-TDC(T)/1730 dated 17th August, 1998.

In pursuance of article 107 read with article 117 of the Articles of Association of the Goa Tourism Development Corporation Limited (hereinafter called the said Corporation), and in partial modification of Notification No. 8/1/86-TDC(T) (II) dated 20th February, 1995, published in Official Gazette, Series II No. 50 dated 16th March, 1995, the Governor of Goa hereby appoints Shri Joaquim Monteiro, Shri Ganani G. Gadekar and Shri Esperdiao Dias as new Directors in place of existing Directors, namely Shri Victor Albuquerque, Shri Kishor Narvekar and Shri Nirajan Alva, respectively, of the said Corporation, with immediate effect.

The Governor of Goa is further pleased to nominate Shri Joaquim Monteiro, Director, as Vice-Chairman of the said Corporation.

By order and in the name of the Governor of Goa.

U. D. Kamat, Director of Tourism and Ex-Officio Joint Secretary.

Panaji, 22nd September, 1998.

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Department of Town & Country Planning****Order**

Ref. No. 4-1-10-89-UDD (Part)/33

On the recommendations of the Goa Public Service Commission vide its letter No. COM/I/5(50)(1)/96 dated 10-11-98, The Governor of Goa is pleased to appoint Shri Gaurish G. Wagle, to the group "A" Gazetted post of Deputy Town Planner, on regular basis with the

basic pay of Rs. 8000/- p. m. in the scale of pay of Rs. 8000-275-13500 with immediate effect and posted at Head Office, Panaji against the post created vide Order No. 4-1-90-UDD dated 5-4-90 and revived vide Order No. 4-1-1-96-TP dt. 3-9-96 and continued upto 28-2-99 vide Order No. 4-1-5-89-UDD/TCP/129 dt. 26-3-98, until further orders.

He has been medically examined and found fit by the authorised medical board of Goa Medical College and Hospital, Bambolim, Goa as communicated vide letter No. 4/106/85-H/GMC dt. 15-1-99.

Shri Gaurish G. Wagle shall be on probation for a period of one year.

The expenditure shall be debited to the budget head 2217-Urban Development, 800-Other Expenditure, 10-Strengthening of Department Administration (Plan), 01-Salaries, 05-Travel expenses.

By order and in the name of the Governor of Goa.

R. N. Ray, Chief Town Planner/Ex-Officio Joint Secretary.

Panaji, 19th January, 1999.

Order

Ref. No. 4-1-10-89-UDD (Part)/34

On the recommendations of the Goa Public Service Commission vide its letter No. COM/I/5(50) (1)/96 dated 10-11-98, the Governor of Goa is pleased to appoint Shri Sandip P. Surlakar, to the group 'A' Gazetted post of Deputy Town Planner, on regular basis with the basic pay of Rs. 8000/- p.m. in the scale of pay of Rs. 8000-275-13500 with immediate effect and posted in South Goa District office, Margao, against the post created vide Order No. 4-1-90-UDD dated 5-4-90 and revived vide Order No. 4-1-1-96-TP dated 3-9-96 and continued upto 28-2-99 vide Order No. 4-1-5-89-UDD/TCP/129 dated 26-3-98, until further orders.

He has been medically examined and found fit by the authorised medical board of Goa Medical College and Hospital, Bambolim, Goa as communicated vide letter No. 4/105/85-H/GMC dated 15-1-99.

Shri Sandip P. Surlakar shall be on probation for a period of one year.

The expenditure shall be debited to the budget head 2217-Urban Development, 800-Other Expenditure, 10-Strengthening of Department Administration (Plan), 01-Salaries, 05-Travel expenses.

By order and in the name of the Governor of Goa.

R. N. Ray, Chief Town Planner/Ex-Officio Joint Secretary.

Panaji, 19th January, 1999.